

ATTACHMENT A

Remarks

Applicant wishes to thank the Examiner for the courteous interview granted to Applicants' attorney on December 16, 2003.

In accordance with Rule 133(b), the reasons brought out at the interview as warranting favorable action are set forth below.

For avoidance of doubt, Applicants are now reaffirming that the Polo device itself is prior art. Paragraph [0003] of the specification as been restored to its original form. It is noted that the Polo device, as shown in the photographs submitted by Applicant are in fact officially of record, as noted in the form PTO-892 attached to the Office Action of February 28, 2003.

For the following reasons, it is submitted that all claims now in this application are patentable over the Polo device prior art, taken alone or in any combination with other references.

Although the structure of the Polo device prior art and the structure of the present invention are clear from the photographs and the drawings, respectively, Applicants nonetheless showed a Polo device and a container of the present invention at the interview. As shown in the drawings and as demonstrated at the interview, the Polo device has a portion which pops up, which may be considered as analogous to a tab portion, which covers an entire 180°, terminating at two hinges and having an aperture opening to the interior at the midpoint of the 180°. The device of the present invention, on the other hand, has a tab portion which covers only a small part of the circumference of the device, essentially covering only the aperture, which device is attached to the

remainder of the container by a single hinge. The tab portion extends from the hinge to just cover the opening.

Although not specifically discussed at the interview, it should be appreciated that the present invention has significant advantages not present in or contemplated by the Polo device prior art. For example when applying pressure to the Polo device to open the 180° lid, that lid acts as a manual and visual obstruction which would require the user to manipulate the Polo device to a significant extent to place the aperture over the user's other hand for receiving poured product while being visually able to see the pouring. This is apparent from viewing the photograph which shows the 180° lid in the popped-up position. In that photograph, if the user's hand and thumb are toward the upper right of that photograph and the user pours out product, it can be readily appreciated that the popped-up lid interferes manually and visually with such pouring, requiring the user to manipulate the Polo device prior art to a greater extent to observe pouring of product into the user's other hand. In marked contrast thereto, when a user pops up the lid of the present invention, with the lid positioned as shown for example in Figure 2 with the user's thumb in the area to the right of hinge 36, the short tab portion 32 which is opened towards the user who is grasping the right hand portion of this dispenser device can more easily dispense the product into the user's other hand while visual observation of the pouring is not blocked, or at worst only partially blocked, by the tab portion. Thus, it will be seen that the present invention provides a tab portion which is clearly advantageous over the Polo device prior art in ways which are not remotely suggested by the Polo device prior art.

The only reference applied against the claims was and is the Polo device prior art. It is believed that none of the other references of record are sufficiently similar to

the Polo device prior art to be combinable therewith. The issue then is unobviousness of the present invention over the Polo device prior art.

It is well settled that a proper obviousness-type rejection requires that there be some suggestion in the prior art to modify the prior art to arrive at the present invention.

Claim 1 recites a dispensing container having a toroidal-shaped body and the like (which in itself is similar to the Polo dispenser device). However, claim 1 further recites that the tab portion extends a distance less than 90° around the top surface. As explained above, having the tab portion extend a distance less than 90°, i.e., a small tab portion, is a factor which contributes to the advantages of the present invention of providing a dispenser having the advantages described above.

The Polo dispenser device shows what it shows, and nothing else. It shows a lid which pops up over a 180° range to uncover an aperture midway through this range. There is absolutely no suggestion whatsoever in the Polo device for completely reconstructing this device to have a tab portion of less than 90°. For example if one used one of the two hinges and covered the aperture, that alone would be greater than 90°. Of course there is no rationale or suggestion whatsoever for removing either of the hinges. In summary, therefore, claim 1 is clearly unobvious over the Polo device prior art and there is no other prior art combinable therewith to render claim 1 obvious. Rather, any such reconstruction would be entirely based on hindsight using Applicants' disclosure as a teaching.

Claim 6 in its previous form was believed to be allowable for the same reason as claim 1. However, in order to provide a claim which differs in substance to a greater extent from claim 1, Applicants have amended claim 6 to include the feature of claim 7 that the tab portion terminates at substantially the edge of the aperture. It is believed

that this feature so clearly renders claim 6 patentable that the previous limitation of 90° is not required for patentability and hence this had been changed to 180°.

Amended claim 6 is clearly unobvious over the Polo prior art. As discussed above, one of the features which contributes to the advantage of ease of manipulating and visually observing the dispensing of product is that the aperture can readily be seen and is readily accessible to the user for pouring the product. One feature which contributes to this advantage is that the tab portion terminates just after the opening which is in very great contrast to the Polo device prior art wherein the lid goes completely by the opening and terminates 180° from its starting point, nowhere in the vicinity of the opening. In summary, the Polo device prior art taken alone or in any combination with other prior art, cannot be reconstructed to render amended claim 6 obvious. Rather, any such reconstruction would be entirely based on hindsight using Applicants' disclosure as a teaching.

At the interview, Applicant urged that this change to claim 6 does not raise a new issue after a Final Rejection. It is believed readily apparent from the entire thrust of the prosecution heretofore, and for reasons explained above, that claim 6 with the addition thereto of claim 7 with respect to terminating the tab portion at substantially the edge of the aperture, was so intricately a part of the previous presentation that it does not constitute a new issue. One primary reason for refusing entry based on a new issue is the need to conduct an additional search. With all due respect, it is virtually impossible that any competent search conducted for the present invention would not have turned up something closer to claim 6 than the references already of record. Indeed, realizing that the present invention concerns a toroidal-shaped body, it is noted that none of the patent references of record show a toroidal-shaped body. Obviously any search for the

present invention would have already located any prior art (other than the Polo device) showing a toroidal-shaped body. In summary, therefore, it is respectfully submitted that simply changing 90° to 180° does not raise a new issue with respect to claim 6. If in fact claim 6 is found to be allowable, then there is no new issue with respect to dependent claims 7-11 because they will then depend from an allowed claim.

Claim 18 is also clearly unobvious over the prior art. Claim 18 recites a toroid dispenser having an aperture and tab portion extending less than 180° and wherein the tab portion is hinged to the remainder of the container by a single hinge. In contrast, the entire structure and operation of the Polo device prior art is the provision of two hinges located 180° apart. If one simply removed one hinge, the device would be essentially inoperable because the tab would flop at its free end and would not reliably cover the opening. Thus, the Polo device requires two hinges; and there is no suggestion whatsoever in the Polo device for completely reconstructing the device to arrive at the invention of claim 18. Rather, any such reconstruction would be entirely based on hindsight using Applicants' disclosure as a teaching.

As requested by the Examiner, the title has been amended to be more specific to the present invention.

In view of the above, it is respectfully submitted that this application is now in condition for allowance, which action is promptly and respectfully solicited.

END REMARKS